IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

El.Pet..No. 3 of 2006()

PETITIONER

T.D.BYJU, S/O.DIVAKARAN,
AGED 40 YEARS, THARAYIL PUTHEN VEEDU,
PUTHUSSERYBHAGOM MURI, ERATHU VILLAGE,
ADOOR TALUK, PATHANAMTHITTA DISTRICT.

BY ADV. SRI. K.SHAJ
SRI.B.BALRAJ
SRI.SAJJU.S

RESPONDENTS:

THIRUVANCHOOR RADHAKRISHNAN (MEMBER OF
LEGISLATIVE ASSEMBLY, KERALA, ADOOR CONSTITUENCY),
S/O.PARAMESWARAN PILLAI, AGED 56 YEARS,
HAVING ADDRESS AT GANDHI BHAVAN, KARUVATTA MURI,
PERINGANADU VILLAGE, ADOOR TALUK, PATHANAMTHITTA
DISTRICT.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.M.P.PRABHANANDAN
SRI.P.K.SOYUZ
SRI.P.K.VIJAYAMOHANAN

THIS ELECTION PETITION HAVING BEEN FINALLY HEARD ON 12/09/2006, THE COURT ON 19-12-2006 DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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E.P.No.3 of 2006

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Dated this the 19th day of December, 2006.

O R D E R

The respondent won the election held on 11-5-2006 from the Adoor L.A.Constituency No.119 to the Kerala Legislative Assembly by a margin of 18,406 votes over his next rival Sri.D.K.John.

2. This election petition is filed by an elector challenging the election of the respondent on the ground that the respondent, his election agent, close aides and workers have printed and published Annexure-A poster without disclosing its publisher and printer and as an innuendo and that its contents could be deciphered to indicate that it is about Sri.D.K.John and further that the contents of that poster are publications amounting to a corrupt practice under Section 123(4) of the Representation of the People Act, 1951, hereinafter, the "Act", for short.

3. Barring the averment in paragraph 6 of the

election petition that a specimen of one such poster "obtained by the petitioner from private bus stand junction, Adoor on 20-4-2006 at about 5.35 a.m.", all other averments regarding the distribution of the said poster and the statements made in paragraph 7 of the election petition to connect the said innuendo to the aforesaid Sri.D.K.John are made by the petitioner on the basis of information and not on personal knowledge.

4. In the affidavit filed in Form 25, under Rule 94-A of the Conduct of Election Rules, 1961, hereinafter referred to as the "C.E.Rules", for short, the petitioner has stated that the statements made in paragraphs 3, 4, 5, 7, 8, 10, 12, 13, 16, 17, 18, 19, 20, 22 and 23 of the election petition regarding the commission of the alleged corrupt practice by the respondent, chief election agent, workers and aides in Schedule 1, 2 and 3 of the election petition are true to his information. That affidavit does not disclose the source of the information on the basis of which the pleadings in the said paragraphs are made. Reverting to the verification at the foot of the election

petition, apart from the paragraphs enumerated above, the averments in paragraphs 21 and 24, are also stated to be on the basis of his information. However, there is no statement in the election petition regarding the source of information of the petitioner as regards the various averments made in the said paragraphs.

5. The petitioner has appended three Schedules to the election petition. Schedule 1 gives the details of the persons, who allegedly saw the affixing and scattering of the posters by Sri.Roy and Sri.Gopi Mohan in different places at the approximate time shown in the said Schedule. Schedule II gives the name of persons, who allegedly witnessed the affixing and scattering of the said posters by 10 different persons, who are enlisted in the said schedule at the different place and time, shown in the said schedule. Similarly, Schedule III contains a list of persons, who allegedly received the posters from the list of persons, who are shown there. However, the petitioner has not averred, either in the election petition or in the affidavit under Rule 94A of the C.E.Rules, the source of

information regarding the contents of the said Schedules. It is not even stated that the persons, who are alleged to have seen the affixing and scattering of Annexure-A or received Annexure-A had informed the petitioner and that the petitioner is making the averments in the election petition on the basis of such information. Paragraph 19 of the election petition refers to Schedules 1, 2 and 3, which paragraph is again verified as to be on the basis of the information of the petitioner. This means that the pleading is to the effect that the alleged witnessing of the affixing and scattering of annexures by the persons enlisted in Schedules 1 and 2 and the alleged receipt of Annexure-A by the persons enlisted in Schedule III are matters on which the petitioner has no personal knowledge, but has only information. However, the source of such information relating to the alleged commission of a corrupt practice has not been disclosed.

6. The contents of Annexure-A, a document in Malayalam of which Annexure-A(a) is an English version with the caption "Should this grave deceit have been

done to a Priest?", produced by the petitioner is extracted by the election petitioner in English in paragraph 6 of the election petition.

7. In paragraph 7 of the election petition, the petitioner has made certain averments intending to provide the facts on the basis of which he would connect the said innuendo to Sri.D.K.John. It reads as follows:

> "As it was the time of election campaigning, the reading of the Annexure A poster would give the voters of Adoor Assembly constituency an impression that the political leader of the said education minister's party was the said Sri.D.K.John. At that time (10-07-2000), Sri.P.J.Joseph, who belonged to Kerala Congress (J) was the Education Minister and the said Sri.D.K.John was the District President of Kerala Congress (J) and Sri.Francis George was the Member of Parliament from Idukky Parliament Constituency, which is spread over Idukky District and a part of Pathanamthitta District. At the time

when the posters were published by the respondents and his co-workers including close aides, as aforesaid, the said Sri.D.K.John was the candidate of LDF in the Assembly Constituency. The said Sri.D.K.John was also an office bearer of the Malankara Orthodox Church Managing Committee. So on reading the said poster it certainly appeared to the voters of the said constituency that it was definitely the said Sri.D.K.John who grabbed money from a priest under the pretext of sanctioning plus two school and he is the political leader contesting the election to the Assembly. Annexure A poster also gives the impression that Sri.P.J.Joseph intimidated Sri.D.K.John on a complaint by the priest when the said Sri.P.J.Joseph visited Pathanamthitta TB and that MP Sri.Francis George intervened in the alleged matter on the complaint of the priest. The poster is calculated by the respondent and his workers and aides to desist the voters from voting for the said Sri.D.K.John and the heading of the poster is implied to be a warning to the voters of Adoor Assembly Constituency. Annexure A poster, thus related to the personal

character and conduct of the said Sri.D.K.John. This, in fact, tarnished the clean image of the said Sri.D.K.John. The publication of the said poster has got the effect of belittling, defaming and maligning the reputation and personal conduct of the said Sri.D.K.John. The respondent and his close aides including the above said Gopi Mohan and Roy and other workers of the respondent deliberately maligned the said Sri.D.K.John and made character assassination with the knowledge that such publicity would defame him and help the respondent in getting a majority of votes. The respondent knew well that the contents of Annexure-A poster were not true and that it was false. Thus the unprincipled campaign helped the respondent in garnering a majority of votes."

8. The aforesaid averments are also verified as made only on the basis of information and not personal knowledge. However, such averments are made without disclosing the source of such information. Though it may be noteworthy, as pointed out by the learned counsel for the respondent, that Sri.D.K.John, the

defeated candidate, has not come up with any election petition challenging the election, it cannot be ignored that in pleading the extrinsic facts in paragraph 7 to connect Annexure-A innuendo of Sri.D.K.John, the petitioner does not even plead the source of any information as to such extrinsic facts about which he does not plead any personal knowledge.

9. Barring the averments in paragraphs 9, 11, 14 and 15 regarding the alleged arrival of the Returning Officer and a direction by him to seize the posters and arrest Roy and the alleged refusal of the police to register a case and further about the alleged arrival of the respondent at the police station demanding the release of Roy, none of the material facts relating to the alleged distribution or of the printing and publication of Annexure-A notice is pleaded by the petitioner, on his own knowledge. Under such circumstances, it was the bounden duty of the election petitioner to disclose the source of information on the basis of which such averments are made.

10. In this context, I deem it appropriate to refer to the decision of the Apex Court in **Shivajirao B.Patil Kawekar v. Vilasrao D.Deshmukh [(2000)1 S.C.C.398]**. A reading of the said decision would show that general averments suffering from deficiency of requisite pleadings and all the constituent parts of corrupt practice would not constitute a pleading of the full cause of action and shall have to be ignored and struck out. Such a petition suffers from the infirmity of non-compliance of Rule 94-A read with From 25 of the C.E.Rules. In **Kamalnath v. Sudesh Verma [(2002) 2 S.C.C.410]**, after noticing the precedents, namely, **V.Narayanaswamy v. C.P.Thirunavukkarasu [(2000)2 S.C.C.294]** and **Ravinder Singh v. Janmeja Singh [(2000) 8 S.C.C.191]**, the Apex Court held that not only a concise statement of material facts and full particulars of the alleged corrupt practice should be pleaded, but an election petition, levelling a charge of corrupt practice shall also be supported by an affidavit in which the election petitioner is obliged to disclose the source of information in respect of the commission of that corrupt practice. This is necessary

to charge the election petitioner with full responsibility and to prevent any fishing and roving enquiry and save the returned candidate from being taken by surprise. In **Narayanaswamy's** case *(supra)*, it was held that the unsworn allegations could have no existence and the court could not take cognizance thereof and further that the charge of corrupt practice being quasi-criminal in nature, the court must always insist on strict compliance under provisions of law that the verification of the election petition in that case was unacceptable. It was held therein as follows:

> "Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and the affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case the petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings.

> It is no part of the duty of the court suo motu even to direct furnishing of better particulars when objection is raised by the other side. Where the petition does not disclose any cause of action it has to be rejected."

11. So much so, there is no proper verification of the election petition and affidavit under Rule 94-A of the C.E.Rules, disclosing the source of information regarding the corrupt practice and the attendant allegations about which the petitioner has pleaded only on the basis of alleged information and not personal knowledge.

12. It was urged by the learned counsel for the respondent that Annexure-A being characterised as an innuendo as against Sri.D.K.John and the said person having chosen not to file any election petition challenging the election of the respondent on the ground of publication of Annexure-A, it is not open to the petitioner, an elector, to file the election petition on that ground.

13. Under Section 81, an election petition may be presented by any candidate at the election in question or any elector. The grounds enumerated under Section 100 for declaring the election to be void do not make any classification between the elector and any candidate at the election, for filing the election petition.

14. But the court is being called upon to try, at the instance of an election petitioner, the connectivity of an innuendo to a third person, Sri.D.K.John in this case, and further the truth or otherwise of the fact that may stand proved by such connectivity of the innuendo to the said Sri.D.K.John by reason of the extrinsic facts. The election petitioner, who is not the person against whom any innuendo is cast, takes upon himself, the responsibility of pleading and proving an innuendo on the basis of certain extrinsic facts as a specific pointer of a conduct or character of a particular person, other than the election petitioner. The veracity of the assertion as to the extrinsic facts on

the basis of which an innuendo is to be treated as addressed to a particular person, in this case Sri.D.K.John, cannot be put to trial, as constituting a corrupt practice referable to Section 123(4) unless specific pleadings of such extrinsic facts are coupled with clear verification of the facts and, if it were only an information, the clear disclosure as to the source.

15. With the aforesaid in view, the pleadings in the election petition have to be examined to consider whether it discloses the essential ingredients of Section 123(4) of the 1951 Act, which are; (1) publication by the candidate, of any statement of fact; (2) the set of fact so published should be false; (3) the candidate or his agent or any other person publishing it either believes it to be false or it is not believed it to be true; (4) The publication is in relation to the personal character and conduct of any candidate; (5) The statement is reasonably calculated to prejudice the prospects of the rival candidates of the election.

16. All that is stated in paragraph 7 of the election petition is that the "respondent knew well that the contents of Annexure-A poster were not true and that it was false". Paragraph 20 of the election petition contains the following averments:

> "The said Sri.D.K.John is an honest politician with due integrity. He never received any illegal gratification from anybody. The allegation, which is made to appear that he received an amount from a priest, is absolutely false. He has not received any amount from any priest. There was also no question of the then Education Minister warning him on any matter. The local MP of his party also had not intervened in any matter as alleged in Annexure A posters."

17. However, as already noticed, the averments in paragraphs 7 and 20 are made on the basis of information. Therefore, the election petitioner does not have personal knowledge of the fact as to the

alleged falsity of the allegation which, according to him, appears to be against Sri.D.K.John. He has not disclosed the source of that information. If, going by the extrinsic facts pleaded in paragraph 7 of the election petition, the contents of Annexure-A are to be held to be connected with Sri.D.K.John, that has to be tried only on the basis of the plea made only on the basis of information of the petitioner, the source of which is not disclosed. The crucial facts which are essential ingredients of corrupt practice under Section 123(4) are pleaded to be based on information while the source of any such information is not pleaded.

18. Under the aforesaid circumstances, it cannot, but be held that the pleadings made in the election petition on the basis of information are liable to be struck off. I do so. The election petition, therefore, does not disclose any cause of action, for being tried. It is only to be rejected.

19. In the result, this election petition is rejected.

The substance of this decision shall be communicated to the election Commission and to the Speaker of the Kerala Legislative Assembly as required by Section 103 of the Act. An authentic copy of this order shall also be sent to the Election Commission as prescribed.

Thottathil B.Radhakrishnan,
Judge.

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